United Nations A/HRC/WG.6/32/NZL/2

General Assembly

Distr.: General
13 November 2018

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Thirty-second session
21 January–1 February 2019

Compilation on New Zealand

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a compilation of information contained in reports of treaty bodies and special procedures and other relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

II. Scope of international obligations and cooperation with international human rights mechanisms and bodies[1, 2]

2. New Zealand was encouraged by several treaty bodies to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[3] the International Convention for the Protection of All Persons from Enforced Disappearance,[4] the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights[5] and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,[6] as well as the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the ILO Domestic Workers Convention, 2011 (No. 189),[7] and to extend the application of the Convention on the Rights of the Child to the territory of Tokelau.[8]

3. Recommendations were made to New Zealand to consider withdrawing its reservations to article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[9] and article 10 (2) (b) and (3) of the International Covenant on Civil and Political Rights, and to consider withdrawing the reservation to article 32 (2) and article 37 (c) of the Convention on the Rights of the Child.

4. New Zealand contributed financially to the Office of the United Nations High Commissioner for Human Rights annually.[10]

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III. National human rights framework[11]

5. The Committee on Economic, Social and Cultural Rights was concerned that in the light of the New Zealand Bill of Rights Act, economic, social and cultural rights did not enjoy equal status with civil and political rights. It was also concerned that the Act lacked supremacy over other statutes and that legislation adversely affecting human rights had remained in effect, despite declarations of inconsistency made by the Human Rights Review Tribunal and the courts under the Human Rights Act.[12] It recommended that New Zealand take the necessary steps to incorporate fully the provisions of the International Covenant on Economic, Social and Cultural Rights into the legal order, so as to render them justiciable in the domestic courts.[13]

6. The Human Rights Committee recommended that New Zealand consider entrenching the Bill of Rights Act 1990 and strengthening the role of the judiciary, as well as parliamentary scrutiny, in assessing the consistency of enacted laws with the Act and with the International Covenant on Civil and Political Rights.[14]

7. The Working Group on Arbitrary Detention noted that one of the essential foundations of the New Zealand system of government was the Treaty of Waitangi, which had been signed between Maori chiefs and the British Crown in 1840. Although the Treaty of Waitangi was the founding document of New Zealand as a nation, it was not a formal part of its domestic law. The Working Group also noted the establishment in the 1970s of the Waitangi Tribunal, whose decisions were however not binding.[15]

8. The Committee on Economic, Social and Cultural Rights recommended that New Zealand take immediate steps, in partnership with Maori representative institutions, to implement the recommendations of the Constitutional Advisory Panel regarding the role of the Treaty of Waitangi within its constitutional arrangements.[16]

9. The Committee on the Elimination of Discrimination against Women was concerned that in the past several years, the New Zealand Human Rights Commission had suffered continual decreases in resources, and that its mandate was limited by the Immigration Act, preventing it from accepting complaints from migrants.[17]

10. The Committee against Torture recommended that New Zealand ensure that the Independent Police Conduct Authority was equipped with a broader mandate and full independence in order to investigate promptly, effectively and impartially all reports of violence.[18]

11. The Committee on the Rights of the Child recommended that New Zealand ensure that the Children's Commissioner had adequate resources.[19]

IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

1. Equality and non-discrimination[20]

12. The Human Rights Committee was concerned about the absence of a comprehensive national strategy to combat racism, racial discrimination, xenophobia and other forms of intolerance, including racial and religious hatred. The Committee regretted the lack of information on the low number of cases of racial discrimination and racially motivated violent incidents that were investigated and where the perpetrators were prosecuted and punished.[21] The Committee on the Elimination of Racial Discrimination recommended that New Zealand ensure that acts of racial discrimination were investigated and that the perpetrators were prosecuted and sanctioned,[22] and that the Race Relations Commissioner play a leadership role in developing, in consultation with all stakeholders, a national plan of action against racial discrimination and xenophobia.[23]

13. The Committee on the Elimination of Discrimination against Women was concerned that discrimination on the grounds of gender identity, gender expression or sex characteristics was not specifically prohibited.[24]

14. The Committee on the Rights of the Child recommended that New Zealand strengthen its measures to combat negative attitudes among the public and other preventive activities against discrimination and, if necessary, take affirmative action for the benefit of children in vulnerable situations, such as Maori and Pasifika children, children belonging to ethnic minorities, refugee children, migrant children, children with disabilities, and lesbian, bisexual, gay, transgender and intersex children.[25]

2. Development, the environment, and business and human rights[26]

15. The Committee on Economic, Social and Cultural Rights was concerned that the regulatory framework for companies operating in the country and those domiciled under its jurisdiction acting abroad did not fully ensure respect for economic, social and cultural rights. It recommended that New Zealand expedite the adoption of a national plan of action on business and human rights to implement the Guiding Principles on Business and Human Rights, and that it strengthen the regulatory framework, including that concerning legal liability, for companies operating in the country and those domiciled under its jurisdiction acting abroad, to ensure that their activities did not negatively affect the enjoyment of economic, social and cultural rights and that victims could claim reparations.[27]

16. The Committee on the Rights of the Child was concerned about the harmful impact of climate change on children's health, especially for Maori and Pasifika children and children living in low-income settings. The Committee drew attention to target 13.5 of the Sustainable Development Goals on promoting mechanisms to raise capacity for effective climate change–related planning and management.[28]

17. The Committee on Economic, Social and Cultural Rights was concerned about the slow pace of processing claims arising from the Canterbury earthquakes and recommended that New Zealand strengthen its efforts to swiftly process the outstanding claims arising from the earthquakes.[29]

3. Human rights and counter-terrorism[30]

18. The Human Rights Committee was concerned that counter-terrorism legislation had been enacted under urgent time frames without providing sufficient time for public consideration and consultation. The Committee recommended that New Zealand fully integrate the rights protected under the Covenant into its legislative and policy actions to combat terrorism and that it ensure that designation procedures and terrorist investigations fully complied with the provisions of the Covenant.[31]

B. Civil and political rights

1. Right to life, liberty and security of person[32]

19. The Human Rights Committee was concerned about information received regarding the equipment of front-line law enforcement officers with electro-muscular disruption devices, such as tasers. The Committee called on New Zealand to re-evaluate its policies on the use of such devices, ensuring consistency with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[33]

20. The Committee against Torture was concerned at reports that, despite remedial measures taken by the authorities, overcrowding remained a problem in many places of detention, as well as at reports that, in a number of such places, the material conditions and health-care services, in particular mental health-care services, were inadequate. It recommended that New Zealand continue to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, and ensure that adequate mental health care was provided for all persons deprived of their liberty.[34]

21. The Committee against Torture was concerned at information received on the persistent seclusion of persons in mental health facilities for the purposes of punishing and disciplining, as well as for health-related reasons. It noted that a significant number of victims had been secluded for more than 48 hours and that Maori were more likely to be secluded. It was also concerned at information that New Zealand continued to include, in new psychiatric facilities, cells specifically designed for solitary confinement. It recommended that New Zealand use solitary confinement and seclusion as measures of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review, and that it prohibit the solitary confinement and seclusion of juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers, in prison and in all health-care institutions.[35] The Committee on the Rights of Persons with Disabilities recommended that immediate steps be taken to eliminate the use of seclusion and restraints in medical facilities.[36]

22. The ILO Committee of Experts on the Application of Conventions and Recommendations observed, in regard to the privatization of prisons and prison labour, that the issue of voluntary written consent did not appear to be addressed in the Corrections Act, and requested that the Government clarify whether the request form required to be submitted by the prisoners of private prisons for employment involved their voluntary consent, such consent being free from the menace of any penalty, including the loss of rights or privileges.[37] The Committee against Torture recommended that New Zealand ensure that privately run places of detention fully complied with domestic laws and international standards and obligations.[38]

2. Administration of justice, including impunity, and the rule of law[39]

23. The Committee on the Elimination of Discrimination against Women was concerned at the decrease in the availability of legal aid, and at the limited access for women to information on available remedies, particularly rural and migrant women. It recommended that New Zealand increase the availability of legal aid for women, in particular Maori and migrant and women belonging to ethnic minority groups, and disseminate information, particularly in rural and remote areas, about available legal remedies.[40]

24. The same Committee was concerned about the apparent crisis within the family court system, and while welcoming the upcoming review of the family court system announced by the Minister of Justice, it was concerned that the review would be focused on the 2014 reforms alone and would not examine the root causes of the systemic lack of trust of and insensitivity towards women who were victims of domestic violence. It recommended that New Zealand establish a royal commission of inquiry to engage in wide-ranging evaluation of the family court system and to recommend the legislative and structural changes necessary to make the family courts safe and just for women and children, particularly in situations of domestic violence.[41]

25. The Working Group on Arbitrary Detention noted that people of Maori descent made up over 50 per cent of the prison population, while Maori comprised approximately 15 per cent of the general population. As a result of the Drivers of Crime initiative, the number of young Maori coming to court had decreased between 2008 and 2012 by approximately 30 per cent. However, the number of young Maori appearing in court was still four times that of non-Maori.[42]

26. The Committee on the Elimination of Racial Discrimination recommended that New Zealand strengthen its efforts to address the root causes leading to disproportionate *incarceration rates of Maori.*[43] *The Human Rights Committee urged New Zealand to review* its law enforcement policies with a view to reducing the incarceration rates and the overrepresentation of members of the Maori and Pasifika communities, particularly women and young people, at all levels of the criminal justice system, as well as the reconviction and reimprisonment rates.[44]

27. The Committee against Torture remained concerned at the gaps in the protection of juveniles in the State's criminal justice system.[45] The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was concerned at the low legal age for criminal responsibility, which started at 10 years under the Children,

Young Persons and Their Families Act 1989 and recommended that New Zealand consider increasing the age of criminal responsibility.[46]

3. Fundamental freedoms and the right to participate in public and political life[47]

28. The Human Rights Committee indicated that New Zealand should take all appropriate measures to enhance Maori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements.[48]

29. The Committee on Economic, Social and Cultural Rights remained concerned that while women comprised the majority of civil servants, only 38 per cent of chief executives of public departments were women. The same Committee recommended that New Zealand pursue its efforts to achieve gender parity in all elected bodies, and step up its measures to increase women's representation in leadership roles in the public sector.[49]

4. Prohibition of all forms of slavery[50]

30. The Committee against Torture welcomed the progress made to combat trafficking in persons, however human trafficking remained a matter of concern for the Committee, as New Zealand reportedly continued to be a destination country for foreign men and women trafficked for the purposes of forced labour and sex and a source of children trafficked within the country for the purpose of sex. The Committee also noted that only a small number of trafficking cases had been brought forward under the State party's anti-trafficking legislation.[51]

31. The Committee against Torture recommended that New Zealand adopt effective measures to prevent, investigate, prosecute and punish acts of trafficking.[52] The Committee on the Elimination of Discrimination against Women recommended that New Zealand speedily adopt a new national action plan to combat human trafficking, in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[53]

32. The Committee on the Rights of the Child urged New Zealand to define and prohibit all cases of sale of children, child prostitution and child pornography, including attempts to commit and complicity in committing any of these acts,[54] and to continue its efforts to develop and implement a comprehensive, coordinated and effective system of data collection, analysis, monitoring and impact assessment on all areas covered by the Optional Protocol on the sale of children, child prostitution and child pornography.[55]

5. Right to privacy and family life[56]

33. The Human Rights Committee was concerned that the right to privacy was not part of the Bill of Rights Act 1990 and that the existing legal framework provided the Government Communications Security Bureau with a very broad mandate. The Committee was concerned about the absence of a clear definition of the terms "national security" and "private communication" in the Telecommunications (Interception Capability and Security) Act 2013. It indicated that New Zealand should take all appropriate measures to ensure that sufficient judicial safeguards were implemented.[57]

C. Economic, social and cultural rights

1. Right to work and to just and favourable conditions of work[58]

34. The Committee on Economic, Social and Cultural Rights expressed concern at the increase in the number of underemployed people and recommended that New Zealand take targeted measures to address underemployment more effectively.[59]

35. The same Committee noted with concern that, despite the efforts undertaken by New Zealand, the unemployment rate among Maori and Pasifika was approximately double the general rate, and that women and persons with disabilities were more likely to be

unemployed. It recommended that New Zealand increase employment opportunities in general and for specific groups, notably Maori, Pasifika, women, persons with disabilities and youth.[60]

36. The Committee was concerned that under the Minimum Wage Act persons with disabilities could be paid lower salaries, below the minimum wage, and urged New Zealand to adopt the necessary legislative and administrative measures, including by revising the Minimum Wage Act, to ensure that all workers, without discrimination, received a minimum wage that enabled them to have decent living conditions.[61]

37. The Committee noted that New Zealand had the lowest gender wage gap among Organization for Economic Cooperation and Development countries. It was concerned, however, that women were more likely to be engaged in part-time, casual and low-paid employment, constituting an obstacle to eliminating the gender wage gap and affecting women's pension benefits when they retired. It was also concerned that women were disproportionately engaged in multiple employment.[62]

38. The Committee on the Elimination of Discrimination against Women was concerned at the decreased funding for childcare facilities and services, which impeded women from participating equally in the workforce.[63]

39. The ILO Committee of Experts referred to its previous comments, drawing the Government's attention to the fact that the Employment Relations Act 2000, the Human Rights Act 1993 and the Equal Pay Act 1972 did not fully reflect the principle of equal pay for work of equal value, since they limited the requirement for equal remuneration for men and women to the same and substantially similar work.[64] The Committee on the Elimination of Discrimination against Women recommended that New Zealand adopt and enforce the principle of equal pay for work of equal value in revised employment relations legislation covering both public and private workplaces.[65]

40. The Committee on the Rights of the Child recommended that New Zealand establish a minimum age of admission to employment in line with international standards and that it ensure that all working children under 18 were protected from hazardous work.[66]

2. Right to social security[67]

41. The Committee on Economic, Social and Cultural Rights recommended that New Zealand pursue its intention to reform the social security system, including the Social Security Act 1964, in wide consultation with civil society, in order to ensure the realization of the right to social security, and that it assess the effectiveness of the sanctions regime applied to non-compliant beneficiaries bearing in mind the core content of the right to social security and the best interests of the child.[68]

3. Right to an adequate standard of living[69]

42. The Committee on Economic, Social and Cultural Rights expressed its concern about the rise in child poverty in New Zealand. It was also concerned about the disproportionate numbers of Maori and Pasifika children and children with disabilities living in households with incomes below the relative income poverty line.[70] The Committee on the Rights of the Child raised similar concerns.[71]

43. The Committee on Economic, Social and Cultural Rights was concerned that disadvantaged groups and individuals, notably Maori and Pasifika families and persons with disabilities, were more likely to experience severe housing deprivation, including overcrowded conditions. It recommended that New Zealand adopt a human rights-based national housing strategy, taking into account the 2018 housing stocktake report produced by the Government. It also recommended that New Zealand step up its efforts to increase the availability of quality affordable housing, paying particular attention to low-income, Maori and Pasifika families, persons with disabilities and older persons.[72]

44. The same Committee was concerned at persistent challenges in access to safe drinking water, leading to outbreaks of disease. The Committee recommended that New Zealand take immediate steps to address the obstacles to access to safe drinking water, including by implementing the findings of the Havelock North drinking water inquiry.[73]

4. Right to health[74]

45. The Committee on Economic, Social and Cultural Rights was concerned about the persistent gaps in the enjoyment of the right to health, with Maori and Pasifika experiencing the worst health outcomes. It was particularly concerned that Maori had higher rates of chronic diseases, experienced higher disability rates and were negatively overrepresented in suicide and mental health statistics.[75] The Committee on the Elimination of Racial Discrimination raised similar issues.[76]

46. The Committee on the Elimination of Discrimination against Women noted that the Crimes Act 1961 contained restrictive grounds for lawful abortion, in which rape and sexual violence were not included. It recommended that New Zealand remove abortion from the Crimes Act 1961, ensure that abortion was legalized, at least in cases of rape, incest, threats to the life or health of the pregnant woman or severe fetal impairment, and ensure access for women to safe abortion and post-abortion care and services.[77]

5. Right to education[78]

47. The United Nations Educational, Scientific and Cultural Organization (UNESCO) noted that New Zealand had adopted new legal measures in the field of education since the previous cycle of the universal periodic review. Among these, the Education (Update) Amendment Act 2017 had set objectives and priorities in the area of education.[79] However, the provision of at least one year of free and compulsory pre-primary education remained absent. In this respect, UNESCO indicated that New Zealand should be encouraged to add provisions of at least one year of free and compulsory quality pre-primary education into its legal framework in line with its commitments under Sustainable Development Goal 4.[80]

48. The Committee on the Rights of Persons with Disabilities was concerned at reports indicating that children with disabilities experienced bullying in schools, and noted that there was no enforceable right to inclusive education. It recommended that further work be undertaken to increase the provision of reasonable accommodation and encouraged the implementation of anti-bullying programmes.[81]

49. Despite the efforts made by New Zealand, the Committee on Economic, Social and Cultural Rights was concerned about the persistence of disparities in the enjoyment of the right to education, whereby Maori and Pasifika students, notably at the secondary school and university levels, achieved lower outcomes than those of European background. The Committee was particularly concerned at the limited availability of Maori, or Maori-speaking, teachers, which limited access to education in the Maori language even further.[82]

50. UNESCO indicated that New Zealand should be encouraged to ensure that all children from all ethnic groups were provided with quality education in line with the Government's commitments. In that process, New Zealand should be strongly encouraged to introduce a government-wide strategy to ensure that the nature and impact of unconscious bias was understood by governance bodies and employees at all levels.[83]

51. UNESCO indicated that New Zealand should be strongly encouraged to harmonize its domestic legislation relating to the rights of persons with disabilities, including in regard to inclusive education, and bring it into line with international standards.[84]

D. Rights of specific persons or groups

1. Women[85]

52. The Committee on the Elimination of Discrimination against Women remained concerned about the alarmingly high level of gender-based violence against women, as well as the very low levels of reporting and the high rate of recidivism, particularly within the Maori community, about the lack of an adequate, culturally sensitive approach, which resulted in cultural and linguistic barriers, about the distrust in public authorities, and about the heightened vulnerability of women with disabilities to violence perpetrated by caregivers.[86] It was also concerned about the absence of a national action plan or

comprehensive strategy for the prevention and elimination of gender-based violence, which was aggravated by the lack of continuity in governmental policies over time.[87]

53. The Human Rights Committee recommended that New Zealand strengthen efforts to combat domestic and all forms of gender-based violence, including sexual violence, particularly in relation to Maori and Pasifika women and girls, as well as women and girls with disabilities. In particular, it recommended that New Zealand ensure that its criminal legislation concerning domestic and gender-based violence, including sexual violence, was enforced effectively across its territory, and that programmes to combat domestic and gender-based violence, including sexual violence, were incorporated into the National Plan of Action for Human Rights.[88] The Committee against Torture recommended guaranteeing in practice that all victims benefited from protection and had access to adequately funded medical and legal aid, psychosocial counselling and social support schemes.[89]

54. The Human Rights Committee remained concerned about the persistent inequalities between women and men, including the unequal representation of women in high-level private and public sector managerial positions.[90] The Committee on the Elimination of Discrimination against Women noted that only 19 per cent of directors of companies listed on the New Zealand Stock Exchange Main Board were women and 56 per cent of businesses had no women in senior roles.[91]

55. The Human Rights Committee recommended that New Zealand develop programmes for the implementation of Sustainable Development Goal 5 to achieve gender equality and empower all women and girls, with particular focus on Maori and Pasifika women and girls, as well as women and girls with disabilities, and that it promote greater women's representation in managerial and leadership positions both in the public and private sectors, including through temporary special measures.[92]

2. Children[93]

56. The Human Rights Committee was concerned about the significant number of children who suffered abuse and neglect, and recommended that New Zealand strengthen its efforts to combat child abuse in all settings, including through the development and implementation of multi-stakeholder, child-friendly early detection and reporting mechanisms.[94]

57. The Committee on the Rights of the Child remained concerned about the difficulties faced by child victims of abuse and neglect in State care in seeking redress, and urged New Zealand to take measures promptly to eradicate the use of violence and abuse of children in State care, including in the form of restraints and detention, to ensure that all professionals and staff working with and for children were provided with the necessary training and supervision and were subjected to the necessary background checks, and to investigate promptly incidents of violence and abuse of children in State care.[95] The Committee on Economic, Social and Cultural Rights recommended that New Zealand effectively investigate claims of abuse of children in State care, and operationalize the Royal Commission of Inquiry into Historical Abuse in State Care and ensure that it was equipped with the resources necessary to discharge its duties efficiently.[96]

58. The Committee on the Elimination of Racial Discrimination raised similar concerns regarding reports of alleged abuse of children in foster care over a period of approximately 40 years, noting the majority were Maori children and that Maori children were still more likely to be placed in government care. It recommended that New Zealand take effective steps to reduce the number of Maori and Pasifika children in State care, including through the policy of "whanau-first" placement for Maori children.[97]

59. While appreciating efforts to preserve Maori identity, the Committee on the Rights of the Child was concerned that those efforts remained insufficient. It recommended that New Zealand ensure that all government agencies developing legislation and policies affecting children took into account the collective dimension of Maori cultural identity and the importance of their extended family (whanau) for Maori children's identity.[98]

3. Persons with disabilities[99]

60. The Committee on Economic, Social and Cultural Rights was concerned that persons with disabilities remained disadvantaged, with their social and economic outcomes remaining far below the outcomes of the general population.[100] The Committee on the Rights of Persons with Disabilities raised similar concerns and noted that children with disabilities were overrepresented in statistics on child poverty and were more likely to be living in one-parent households.[101] It recommended that a review be undertaken of disability-related costs to ensure a sufficient allocation of income/pension, in particular for children with disabilities, and their families.[102]

61. The Committee on Economic, Social and Cultural Rights was concerned that the existing legal provisions did not conform to international standards regarding reasonable accommodation and inclusive education.[103] The Committee on the Rights of Persons with Disabilities noted that the Human Rights Act contained a separate definition of reasonable accommodation but was concerned about its opaqueness. It recommended that, in order to clarify the meaning of reasonable accommodation, New Zealand give consideration to amending the Human Rights Act 1993 to include a definition of reasonable accommodation, in conformity with the definition in the Convention.[104] It also recommended that further work be undertaken to increase the provision of reasonable accommodation in primary and secondary education.[105]

4. Minorities and indigenous peoples[106]

62. The Committee on the Elimination of Racial Discrimination noted that little progress had been made in securing indigenous rights to self-determination under the Treaty of Waitangi or the power-sharing arrangement between hapu and New Zealand required by the Treaty. It was concerned by reports that the Waitangi Tribunal was underresourced, leading to long processing delays. It recommended that New Zealand issue, without delay, a timetable for debating, in partnership with Maori, the recommendations of the Constitutional Advisory Panel regarding the role of the Treaty of Waitangi within its constitutional arrangements, along with the proposals contained in the report of Matike Mai Aotearoa and all stakeholders.[107]

63. While noting steps already taken, the Committee on the Elimination of Racial Discrimination was concerned about the lack of progress in implementing the recommendations contained in the Waitangi Tribunal's 2011 Wai 262 report regarding, among other issues, Maori intellectual and cultural property rights and Maori treasured possessions, including language, culture and knowledge. The same Committee recommended that New Zealand produce and publish a plan with targets and a timetable for implementing the remainder of the recommendations contained in the Wai 262 decision.[108] The Committee on the Rights of the Child recommended that New Zealand intensify efforts to promote and foster Maori language, culture and history in education and increase enrolment in Maori language classes.[109]

64. The Committee on Economic, Social and Cultural Rights was concerned at the limited efforts that had been made to ensure meaningful participation of Maori in decision-making concerning laws that impacted on their rights, including land and water rights. It was also concerned that the principle of free, prior and informed consent was not systematically implemented, in particular in the context of development and extractive activities carried out on territories owned or traditionally used by Maori.[110] It recommended that New Zealand take effective measures to ensure compliance with the requirement of obtaining the free, prior and informed consent of indigenous peoples, notably in the context of extractive and development activities, and that it conduct social, environmental and human rights impact assessments prior to granting licences for extractive and development activities and during operations.[111]

65. The Committee on the Elimination of Racial Discrimination was concerned about the application of the Marine and Coastal Area (Takutai Moana) Act 2011 on Maori land and resource rights, and by reports that New Zealand had not consistently applied the principle of free, prior and informed consent in matters affecting Maori customary marine interests. It reiterated its recommendation that New Zealand review the Marine and Coastal

Area (Takutai Moana) Act 2011 with a view to respecting and protecting the full enjoyment by Maori communities of their rights regarding the land and resources they traditionally owned or used, and their access to places of cultural and traditional significance.[112]

66. The Committee on the Elimination of Racial Discrimination was concerned by reports that New Zealand had granted private companies the right to use freshwater resources located on traditional Maori land despite consistent opposition by local Maori. It urged New Zealand to ensure full respect for the rights of Maori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.[113]

5. Migrants, refugees and asylum seekers[114]

67. The Committee on Economic, Social and Cultural Rights was concerned about the working conditions of migrant workers, which were characterized by excessive working hours and non-payment or underpayment of wages. It was also concerned about the significant non-compliance by employers with employment laws, including in industries that employed migrant workers.[115] While noting with interest action taken to prevent exploitation of migrants, the Committee on the Elimination of Racial Discrimination was concerned at reports that migrant workers risked being subjected to labour discrimination and exploitation. It was also concerned about reports of inadequate access to social services, including mental health programmes, housing and employment, for asylum seekers and refugees.[116]

68. The Human Rights Committee was concerned that the immigration legislation of New Zealand allowed for the disclosure of a claimant's information to third parties, including the claimant's country of origin, and that there were differences in treatment between some categories of refugees and those arriving under the refugee quota programme of the Office of the United Nations High Commissioner for Refugees.[117]

69. The Human Rights Committee was concerned that the Immigration Amendment Act 2013 provided for the detention of mass arrivals for an initial period of up to 6 months, renewable every 28 days. The Committee was also concerned that police facilities were used for immigration purposes, and that migrants and asylum seekers were not separated from the rest of the detainee population.[118]

70. The Human Rights Committee recommended that New Zealand ensure that migrants and asylum seekers detained in correctional and police facilities were separated from the rest of the detainee population.[119] The Committee against Torture recommended that New Zealand adopt the measures necessary to ensure that detention was applied only as a measure of last resort, when determined to be strictly necessary, in a manner proportionate to each individual case and for as short a period as possible, and ensure that stateless persons whose asylum claims had been refused and refugees with adverse security or character assessments were not held in detention indefinitely.[120]

71. The Committee on the Rights of the Child recommended that New Zealand strengthen its efforts to promote the integration of and access to services by asylum-seeking and refugee children, paying particular attention to those with disabilities.[121]

Notes

1 Tables containing information on the scope of international obligations and cooperation with international human rights mechanisms and bodies for New Zealand will be available at www.ohchr.org/EN/Countries/AsiaRegion/Pages/NZIndex.aspx.

2 For relevant recommendations, see A/HRC/26/3, paras. 128.1–128.28, 128.46–128.47, 128.101–128.102, 128.104 and 128.146.

3 E/C.12/NZL/CO/4, para. 52; CERD/C/NZL/CO/21-22, para. 39; CRC/C/NZL/CO/5, para. 49; and CAT/C/NZL/CO/6, para. 22.

4 E/C.12/NZL/CO/4, para. 52.

5 Ibid., para. 51.

6 CRC/C/NZL/CO/5, para. 48.

7 CERD/C/NZL/CO/21-22, para. 39; and E/C.12/NZL/CO/4, para. 9.

8 CRC/C/NZL/CO/5, para. 5.

[9] CAT/C/NZL/CO/6, para. 20.
[10] OHCHR, "Funding", in *OHCHR Report 2017*, pp. 79, 83, 85 and 90; *OHCHR Report 2016*, pp. 78–79, 83, 85 and 90; *OHCHR Report 2015*, pp. 61, 65 and 67; and *OHCHR Report 2014*, pp. 63, 67 and 69.
[11] For relevant recommendations, see A/HRC/26/3, paras. 128.27–128.36 and 128.42–128.47.
[12] E/C.12/NZL/CO/4, para. 5.
[13] Ibid., paras. 5–6.
[14] CCPR/C/NZL/CO/6, para. 10 (c).
[15] A/HRC/30/36/Add.2, paras. 12–13.
[16] E/C.12/NZL/CO/4, para. 9.
[17] CEDAW/C/NZL/CO/8, para. 19.
[18] CAT/C/NZL/CO/6, para. 10.
[19] CRC/C/NZL/CO/5, para. 11.
[20] For relevant recommendations, see A/HRC/26/3, paras. 128.62, 128.68–128.81 and 128.147–128.151.
[21] CCPR/C/NZL/CO/6, para. 19.
[22] CERD/C/NZL/CO/21-22, para. 11.
[23] Ibid., paras. 6–7.
[24] CEDAW/C/NZL/CO/8, para. 11.
[25] CRC/C/NZL/CO/5, para. 15.
[26] For relevant recommendations, see A/HRC/26/3, paras. 128.48–128.53.
[27] E/C.12/NZL/CO/4, paras. 16–17. See also CRC/C/NZL/CO/5, para. 13.
[28] CRC/C/NZL/CO/5, para. 34.
[29] E/C.12/NZL/CO/4, paras. 39–40.
[30] For the relevant recommendation, see A/HRC/26/3, para. 128.155.
[31] CCPR/C/NZL/CO/6, paras. 13–14.
[32] For relevant recommendations, see A/HRC/26/3, paras. 128.82–128.84 and 128.132.
[33] CCPR/C/NZL/CO/6, paras. 33–34. See also CAT/C/NZL/CO/6, para. 17.
[34] CAT/C/NZL/CO/6, para. 13. See also CAT/OP/NZL/1, para. 32.
[35] CAT/C/NZL/CO/6, para. 15.
[36] CRPD/C/NZL/CO/1, para. 32.
[37] See www.ilo.ch/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3276844:N.
[38] CAT/C/NZL/CO/6, para. 13. See also CAT/OP/NZL/1, para. 13.
[39] For relevant recommendations, see A/HRC/26/3, paras. 128.56, 128.64, 128.81–128.84 and 128.133.
[40] CEDAW/C/NZL/CO/8, paras. 13–14.
[41] Ibid., paras. 47–48.
[42] A/HRC/30/36/Add.2, p. 2. See also CAT/C/NZL/CO/6, para. 14.
[43] CERD/C/NZL/CO/21-22, paras. 24–25.
[44] CCPR/C/NZL/CO/6, para. 26.
[45] CAT/C/NZL/CO/6, para. 16.
[46] CAT/OP/NZL/1, paras. 53–54.
[47] For the relevant recommendation, see A/HRC/26/3, para. 128.145.
[48] CCPR/C/NZL/CO/6, paras. 47–48.
[49] E/C.12/NZL/CO/4, paras. 21–22.
[50] For the relevant recommendation, see A/HRC/26/3, para. 128.131.
[51] CAT/C/NZL/CO/6, para. 12. See also CCPR/C/NZL/CO/6, paras. 39–40.
[52] Ibid.
[53] CEDAW/C/NZL/CO/8, para. 28.
[54] CRC/C/OPSC/NZL/CO/1, para. 9.
[55] Ibid., para. 7.
[56] For relevant recommendations, see A/HRC/26/3, paras. 128.34 and 128.154.
[57] CCPR/C/NZL/CO/6, paras. 15–16.
[58] For relevant recommendations, see A/HRC/26/3, paras. 128.36, 128.39, 128.69 and 128.95–128.99.
[59] E/C.12/NZL/CO/4, paras. 23–24.
[60] Ibid.
[61] Ibid., paras. 25–26.
[62] Ibid., para. 30.
[63] CEDAW/C/NZL/CO/8, para. 33.
[64] See www.ilo.ch/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3343054:NO.
[65] CEDAW/C/NZL/CO/8, para. 34.
[66] CRC/C/NZL/CO/5, para. 44.
[67] For relevant recommendations, see A/HRC/26/3, paras. 128.61 and 128.138.
[68] E/C.12/NZL/CO/4, para. 35.

[69] For relevant recommendations, see A/HRC/26/3, paras. 128.51–128.53, 128.55, 128.57–128.63, 128.66–128.67, 128.70 and 128.135.
[70] E/C.12/NZL/CO/4, para. 37.
[71] CRC/C/NZL/CO/5, para. 35.
[72] E/C.12/NZL/CO/4, paras. 39–40.
[73] Ibid., paras. 42–43.
[74] For relevant recommendations, see A/HRC/26/3, paras. 128.64, 128.69 and 128.136–128.137.
[75] E/C.12/NZL/CO/4, para. 44.
[76] CERD/C/NZL/CO/21-22, paras. 26–28.
[77] CEDAW/C/NZL/CO/8, paras. 39–40.
[78] For relevant recommendations, see A/HRC/26/3, paras. 128.36, 128.64, 128.69, 128.139–128.141 and 128.143.
[79] UNESCO submission for the universal periodic review of New Zealand, para. 11.
[80] Ibid., para. 12.
[81] CRPD/C/NZL/CO/1, paras. 49–50.
[82] E/C.12/NZL/CO/4, para. 48.
[83] UNESCO submission, para. 16.
[84] Ibid., para. 18.
[85] For relevant recommendations, see A/HRC/26/3, paras. 128.39, 128.69–128.70, 128.91–128.99, 128.106–128.112, 128.114–128.122, 128.125–128.127 and 128.129–128.130.
[86] CEDAW/C/NZL/CO/8, para. 25.
[87] Ibid.
[88] CCPR/C/NZL/CO/6, para. 30. See also E/C.12/NZL/CO/4, paras. 12–13.
[89] CAT/C/NZL/CO/6, para. 11.
[90] CCPR/C/NZL/CO/6, para. 17.
[91] CEDAW/C/NZL/CO/8, para. 29.
[92] CCPR/C/NZL/CO/6, para. 18.
[93] For relevant recommendations, see A/HRC/26/3, paras. 128.44, 128.54–128.64, 128.66–128.67, 128.69–128.70, 128.106–128.109, 128.111–128.115, 128.122–128.124, 128.128–128.130, 128.138 and 128.143.
[94] CCPR/C/NZL/CO/6, paras. 31–32.
[95] CRC/C/NZL/CO/5, paras. 22–23.
[96] E/C.12/NZL/CO/4, para. 13.
[97] CERD/C/NZL/CO/21-22, paras. 33–34.
[98] CRC/C/NZL/CO/5, para. 19.
[99] For relevant recommendations, see A/HRC/26/3, paras. 128.52, 128.67, 128.95, 128.105 and 128.136.
[100] E/C.12/NZL/CO/4, para. 19.
[101] CRPD/C/NZL/CO/1, para. 59.
[102] Ibid., para. 60.
[103] E/C.12/NZL/CO/4, para. 19.
[104] CRPD/C/NZL/CO/1, paras. 11–12.
[105] Ibid., paras. 49–50.
[106] For relevant recommendations, see A/HRC/26/3, paras. 128.36–128.38, 128.63–128.67, 128.69, 128.73–128.90, 128.95, 128.101, 128.126–128.127, 128.137 and 128.143–128.144.
[107] CERD/C/NZL/CO/21-22, paras. 12–13.
[108] Ibid., paras. 16–17.
[109] CRC/C/NZL/CO/5, para. 19.
[110] E/C.12/NZL/CO/4, para. 8.
[111] Ibid., para. 9.
[112] CERD/C/NZL/CO/21-22, paras. 20–21. See also CCPR/C/NZL/CO/6, para. 44.
[113] CERD/C/NZL/CO/21-22, paras. 22–23.
[114] For relevant recommendations see A/HRC/26/3, paras. 128.69, 128.101 and 128.146–128.154.
[115] E/C.12/NZL/CO/4, para. 27.
[116] CERD/C/NZL/CO/21-22, para. 31.
[117] CCPR/C/NZL/CO/6, para. 35.
[118] Ibid., para. 37.
[119] Ibid., para. 38.
[120] CAT/C/NZL/CO/6, para. 18.
[121] CRC/C/NZL/CO/5, para. 40.